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6 **IN THE UNITED STATES DISTRICT COURT**
7 **FOR THE DISTRICT OF ARIZONA**
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9 Basilea Mena,

10 Plaintiff,

11 v.

12 Robert Massie,

13 Defendant.
14

No. CV-17-00368-TUC-DCB

ORDER

15 The Court denies the Motion for Reconsideration because it is untimely and lacks
16 merit.

17 On January 8, 2019, the Court granted summary judgment for Defendants based
18 on qualified immunity in part on the Fourth Amendment claim alleging an unreasonable
19 seizure and denied summary judgment in part on the excessive use of force claim. The
20 case is trial ready. On August 3, 2021, the Plaintiff filed a Motion for Reconsideration of
21 summary judgment of the false arrest claim. She argues that briefing the motions in
22 limine focused attention on evidence related to the false arrest allegations warranting its
23 reinstatement for trial. To be clear, she does not argue that new evidence was introduced
24 by Defendants in the motions in limine. “Absent good cause shown, any motion for
25 reconsideration shall be filed no later than fourteen (14) days after the date of the filing of
26 the Order that is the subject of the motion.” LRCiv 7.2(g)(2). The Plaintiff does not assert
27 good cause for the late filing; the issue of timeliness is ignored in the Motion for
28 Reconsideration.

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2 Fed. R. Civ. P. Rule 59(e) permits a district court to reconsider and amend a previous
3 order, and offers an ““extraordinary remedy, to be used sparingly in the interests of finality
4 and conservation of judicial resources.”” *Kona Enterprises, Inc. v. Est. of Bishop*, 229 F.3d
5 877, 890 (9th Cir. 2000) (quoting 12 James Wm. Moore et al., supra § 59.30[4])). Indeed,
6 ““a motion for reconsideration should not be granted, absent highly unusual circumstances,
7 unless the district court is presented with newly discovered evidence, committed clear
8 error, or if there is an intervening change in the controlling law.”” *Id.* (quoting 389 *Orange*
9 *Street Partners v. Arnold*, 179 F.3d 656, 665 (9th Cir. 1999)).

10 A Rule 59(e) motion may not be used to raise arguments or present evidence for the
11 first time when they could reasonably have been raised earlier in the litigation. *Id.*, see also
12 *School Dist. No. 1J, Multnomah County, Or. v. ACandS, Inc.*, 5 F.3d 1255, 1263 (9th
13 Cir.1993). A motion for reconsideration should not be used to ask a court “to rethink what
14 the court had already thought through, rightly or wrongly.” *Above the Belt, Inc. v. Mel*
15 *Bohannon Roofing, Inc.*, 99 F.R.D. 99, 101 (E.D.Va.1983). A motion for reconsideration
16 should not repeat any argument previously made in support of or in opposition to a motion.
17 *Motorola, Inc. v. J.B. Rodgers Mech. Contractors, Inc.*, 215 F.R.D. 581, 586 (D. Ariz.
18 2003). Mere disagreement with a previous order is an insufficient basis for reconsideration.
19 *Leong v. Hilton Hotels Corp.*, 689 F. Supp. 1572, 1573 (D. Haw. 1988). Arguments that
20 the court was in error on the issues it considered should be directed to the court of appeals.
21 *See Refrigeration Sales Co. v. Mitchell–Jackson, Inc.*, 605 F.Supp. 6, 7 (N.D.Ill.1983),
22 aff’d, 770 F.2d 98 (7th Cir.1985).

23 In summary, reconsideration is only appropriate if the Court has patently
24 misunderstood a party, has made a decision outside the adversarial issues presented to the
25 court by the parties, or has made an error not of reasoning but of apprehension. This and
26 significant changes in controlling law are rare problems, and a motion to reconsider should
27 be equally rare. *Above the Belt, Inc.*, 99 F.R.D. at 101, *Sullivan v. Faras-RLS Group, Ltd.*,
28 795 F. Supp. 305, 308-09 (D. Ariz. 1992).

1 Plaintiff's Motion for Reconsideration relies on the deposition testimony of
 2 Defendant Massie, which was taken on January 26, 2018, and relied on in the Plaintiff's
 3 Response to the Defendants' Motion for Summary Judgment. *See* (Response (Doc. 30) at
 4 6 (citing SOF ¶¶ 24, 26, Massie's deposition, 19:25; 20:1-25; 21:1-22); (Ds SOF (same)).
 5 To the extent the Plaintiff focuses now on Massie's deposition testimony, the Court rejects
 6 this as newly discovered evidence. Plaintiff simply disagrees with the Court's prior Order
 7 and is asking the Court to rethink its prior decision. Plaintiff is doing exactly what is
 8 precluded on reconsideration. She may not reurge in order to refine the argument she
 9 previously made in response to the Defendants' Motion for Summary Judgment.

10 When the Court granted summary judgment on the false arrest claim, the Court
 11 found "that there was reasonable suspicion to detain the Plaintiff under *Terry*¹ to investigate
 12 the cause of the disturbance occurring in the middle of the street, including whether it
 13 involved illegal underage consumption of alcohol, domestic violence, or some public safety
 14 issue." (Order (Doc. 37) at 5.) The basis of the arrest was, however, an alleged violation of
 15 A.R.S. § 13-2412A "which provides:

16 It is unlawful for a person, after being advised that the person's refusal to
 17 answer is unlawful, to fail or refuse to state the person's true full name on
 18 request of a peace officer who has lawfully detained the person based on
 19 reasonable suspicion that the person has committed, is committing or is about
 to commit a crime. A person detained under this section shall state the
 person's true full name but shall not be compelled to answer any other inquiry
 of a peace officer.

20 *Id.* at 2.

21 In her Response to the Motion for Summary Judgment, the Plaintiff argued that
 22 Defendant violated her constitutional rights by arresting her because there was "no
 23 reasonable suspicion" to believe she violated the statute because: 1) there was no evidence
 24 she was asked her name or told that her refusal to state her full name was unlawful,
 25 (Response (Doc. 30) at 4), and/or 2) officers knew they could not arrest her for "asking or
 26 waiting for an answer without compliance with A.R.S. 13-2412A," *id.* at 6.

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¹ *Terry v. Ohio*, 392 U.S. 1 (1968).

1 As she does now, the Plaintiff asserted “the Defendant knew that Plaintiff was not
 2 required to give him her identification under Arizona law. (PSOF 26) Defendant agreed
 3 that a citizen can ask \questions of the police, including ‘why do I have to hand you my
 4 identification.’ (PSOF 24)”² (Response (Doc. 30) at 4.) She relied on the arrest sequence
 5 as described by the Defendant, in relevant part as follows:

6 Q: And she was under arrest for what?

7 **A: Failure to identify. She’d been given multiple**
 8 **opportunities to provide her identification. It had been**
 9 **explained to her, the legal issue, she is required to identify**
 10 **herself. At one point she acted like she was going to**
 11 **identify by providing her ID, then she -- it appeared that she**
 12 **changed her mind, and at that point that was -- she was**
 13 **noncompliant with her -- the requirement for her to provide**
 14 **her truthful name.**

15 (Response (Doc. 30) at 5.) In response to the Motion for Summary Judgment, the Plaintiff
 16 argued it was “clear that the context was paper identification and that her identification was
 17 in her wallet. She ‘changed her mind’ while she waited for an explanation to her question.”
 18 *Id.* at 6.

19 Based on the Plaintiff’s response to the Defendants’ assertion of qualified immunity,
 20 the Court held the issue was whether Officer Massie had reasonable suspicion for arresting
 21 the Plaintiff for violating A.R.S. § 13-2412(A). The Court found “he did not,” based on the
 22 “facts as stated by the Plaintiff.” “He did not ask her to state her true name. He did not
 23 warn her that failure to give her full true name would result in her arrest. He had neither a
 24 reasonable suspicion nor probable cause to believe she was violating A.R.S. § 13-
 25 2412(A).” (Order (Doc. 37) at 5.) The Court found “that this is the exact type of mistake
 26 that qualified immunity guards against.” *Id.*

27 The Court noted, “[t]here is no allegation by the Plaintiff that Defendant Massie
 28 intentionally disregarded the statute.” Either he did ask her for her full true name or as she
 alleges he didn’t *because he reasonably, but mistakenly believed the statute reached her*

² She also asked: “What we did wrong,” (Order (Doc. 37) at 4 (quoting (Ds SOF Ex. Mena Depo. at 25 (Doc. 29-2 at 11))).

1 *conduct of refusing to produce identification.” Id.* On reconsideration, the Plaintiff argues
2 that the Court erred in concluding Massie did not assert intentional disregard for the statute.
3 Her Complaint alleged “None of the officers told Ms. Mena that she was not required to
4 provide identification nor was she told that she was only required to provide them with her
5 full name.” (Motion Reconsideration (Doc. 67) at 3 (quoting Complaint ¶ 11).

6 The Court notes that this allegation is not the same as alleging that Massie knew the
7 Plaintiff had not been told that she was required to provide her full true name.

8 As the Court understands the basis for reconsideration, Plaintiff challenges the
9 Court’s assessment regarding the reasonableness of any mistake because there is no
10 evidence to support any finding of mistake. Massie admits knowing the statute can only be
11 violated if a person fails to give her true full name after being advised that the person's
12 refusal to answer is unlawful. Massie also admits he knew that refusing to tender paper
13 identification did not violate the statute and knew that the Plaintiff could ask questions. In
14 other words, because Massie knew all Plaintiff’s conduct did not violate the statute, he
15 knowingly and intentionally violated her constitutional right to be free from false arrest
16 when he arrested her for violating A.R.S. § 13-2412(A).

17 The evidentiary arguments made by the Plaintiff, however, merely support the
18 Court’s conclusion on summary judgment that Massie violated the Plaintiff’s constitutional
19 right to be free of an illegal arrest. It does not defeat the Defendants’ claim of qualified
20 immunity, which is a defense designed to guard against unintentional mistakes. “The
21 doctrine of qualified immunity “shields an officer from suit when [he] makes a decision
22 that, even if constitutionally deficient, reasonably misapprehends the law governing the
23 circumstances confronted. Even if the officer's decision is constitutionally deficient,
24 qualified immunity shields [him] from suit if [his] misapprehension about the law
25 applicable to the circumstances was reasonable.” *Brosseau v. Haugen*, 543 U.S. 194, 198
26 (2004).

27 The purpose of the doctrine is “to recognize that holding officials liable for
28 reasonable mistakes might unnecessarily paralyze their ability to make difficult decisions

1 in challenging situations, thus disrupting the effective performance of their public duties.”
2 *Mueller v. Aufer*, 576 F.3d 979, 993 (9th Cir. 2009). Because “it is inevitable that law
3 enforcement officials will in some cases reasonably but mistakenly conclude that probable
4 cause is present,” qualified immunity protects officials “who act in ways they reasonably
5 believe to be lawful.” *Garcia v. Cty. of Merced*, 639 F.3d 1206, 1208 (9th Cir. 2011). It
6 “gives ample room for mistaken judgments” and protects “*all but the plainly incompetent*
7 *or those who knowingly violate the law.*” *Hunter v. Bryant*, 502 U.S. 224 (1991) (emphasis
8 added); *see also Ashcroft v. al-Kidd*, 563 U.S. 731, 743 (2011) (quoting *Malley v. Briggs*,
9 475 U.S. 335, 341 (1986)).

10 The Court finds no merit to the Motion for Reconsideration. As the arrest sequence
11 proffered by Plaintiff in her Response to the Defendants’ Motion for Summary Judgment
12 suggests, there was ample evidentiary support for the Court’s finding that Massie
13 reasonably made a mistake in believing he had probable cause to arrest her. The Court
14 focused on Plaintiff’s conduct of refusing to produce her identification because the
15 Response argued the context of the arrest sequence related to the paper investigation. Even
16 if the Court got it wrong in concluding Massie may have reasonably, but mistakenly,
17 believed the failure to provide her identification violated A.R.S. § 13-2412(A), he either
18 reasonably believed she had been asked and advised to give her true name or that there was
19 probable cause to arrest her for some other reason, such as her refusal to produce her
20 identification to allay suspicions she drinking underage. *See* (Response (Doc. 30) at 4
21 (recognizing the Defendant “may have been suspicious of underage alcohol consumption”
22 but arguing they should have asked her age instead of asking her to produce identification).
23 There is no legal support for Plaintiff’s suggestion that Defendants should not have asked
24 her to produce her identification to address the suspected underage drinking.

25 The Court’s Order did not address the Defendants’ other proffers of probable cause
26 for the arrest because the Plaintiff did not address them in her Response. Defendants
27 submitted there was probable cause to arrest the Plaintiff because her refusal to move away
28 from her boyfriend hindered their investigation, and there were obvious safety concerns

1 because she was intoxicated on a center median at night and in close proximity to cars
2 traveling past them on a busy street. (MSJ (Doc. 28) at 8) (citing *Tremblay v. McClellan*,
3 350 F.3d 195, 201 (1st Cir. 2003) (An objectively reasonable officer could have been
4 concerned that juveniles under the influence of alcohol walking along a highway in the
5 middle of the night could run a risk of being hit by a car.)

6 It is well established that “an arrest without probable cause violates the Fourth
7 Amendment and gives rise to a claim for damages under § 1983.” *Rosenbaum v. Washoe*
8 *Cty.*, 663 F.3d 1071, 1076 (9th Cir. 2011) (quoting *Borunda v. Richmond*, 885 F.2d 1384,
9 1391 (9th Cir. 1988)). When assessing qualified immunity for a claim of false arrest, the
10 Court looks at the facts the officer knew at the time of the arrest to determine if he (1) had
11 probable cause for the arrest and (2) “whether it is reasonably arguable that there was
12 probable cause to arrest—that is, whether reasonable officers could disagree as to the
13 legality of the arrest such that the arresting officer is entitled to qualified immunity.” *Id.*
14 (citing *Jenkins v. City of New York*, 478 F.3d 76, 87 (2d Cir. 2007)); *Dubner v. City & Cty.*
15 *of San Francisco*, 266 F.3d 959, 964-65 (9th Cir. 2001)),

16 An arrest is supported by probable cause if, “under the totality of circumstances
17 known to the arresting officers, a prudent person would have concluded that there was a
18 fair probability that [the suspect] had committed a crime.” *Luchtel v. Hagemann*, 623 F.3d
19 975, 979 (9th Cir. 2010). The crime need not be the crime ultimately charged nor
20 contemplated at the time of arrest. *See Rosenbaum*, 663 F.3d at 1076; *Davenpeck v. Alford*,
21 543 U.S. 146, 153-55 (2004) (rejecting the “closely related offense” rule as inconsistent
22 with objective standard and finding, where arrest was for tape recording traffic stop,
23 probable cause existed for arrest for impersonating an officer and obstructing justice).

24 Plaintiff’s failure to respond to the Defendants’ other assertions of probable cause
25 warranted granting the Motion for Summary Judgment. Under the totality of the
26 circumstances known to the arresting officers, as alleged by the Plaintiff, the Defendants
27 had probable cause to arrest the Plaintiff for impeding the investigation and public safety
28 concerns. The Court finds the Motion for Reconsideration lacks merit.

1 **Accordingly,**

2 **IT IS ORDERED** that the Motion for Reconsideration (Doc. 67) is DENIED as
3 untimely and for lack of merit.

4 Dated this 13th day of August, 2021.

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A handwritten signature in black ink, appearing to read "David C. Bury", is written over a horizontal line.

Honorable David C. Bury
United States District Judge